

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

July 17, 2008

A meeting of the Board of Environmental Protection was held on Thursday, July 17, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Richard Gould, M. Wing Goodale, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler

<u>Staff:</u>	Bureau of Air Quality	Tammy Gould
	Bureau of Air Quality	Richard Greves
	Bureau of Air Quality	Eric Kennedy
	Bureau of Air Quality	Marc Cone
	Bureau of Air Quality	Mike Karagiannes
	Bureau of Air Quality	Ron Severance
	Bureau of Land and Water Quality	Colin Clark
	Bureau of Land and Water Quality	Mike Mullen

Others: David P. Littell, Commissioner
Jerry Reid, Assistant Attorney General (morning session only)
Peggy Bensinger, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 5:00 p.m.)

BOARD CONVENED AT 9:00A.M. AND CONDUCTED A PUBLIC HEARING IN THE MATTER OF:

- Chapter 137, Emission Statement / Amendments

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Energy: There are four (4) boards/task forces working on energy concerns. Two were created as a result of greenhouse gas legislation: (1) the Energy Conservation Advisory Board (DEP Commissioner currently serves on this Board), (2) the Energy and Carbon Savings Trust.

- The Energy Conservation Advisory Board provides advice to the PUC's Efficiency Maine Program / the Carbon Trust initiative as well as the Governor's Office on Energy Efficiency in the areas of energy efficiency, conservation and reducing carbon emissions.
- The Energy and Carbon Savings Trust will be responsible for allocation of monies and establishing rules in association with use of proceeds from the carbon auctions. Appointments are pending.

The remaining energy task forces are: (3) Wood to Energy Task Force and (4) Pre-emergency Energy Task Force. While the Department does not maintain a seat on either of these task forces, it has been asked to participate because of relevant data which will help the group move forward with evaluation of particular issues.

- Wood to Energy Task Force – This group is chaired by Less Otten. This group will look for uses of wood pellets to ease the cost and reliance on fossil fuel sources.
- Pre-emergency Energy Task Force – chaired by the Governor's chief of staff, Jane Lincoln, and the Governor's Director of Energy Independence, John Kerry. This task force will focus on issues associated with the increased cost of energy (e.g. home heating).

Commissioner Littell briefed the Board on the three energy related issues.

- (1) Fuel sources for home heating: The Department has developed a table depicting various home heating fuel sources that compares the fuel cost and BTU value. This table may aid individuals in making decisions concerning energy efficiency for residential and business heating needs. Commissioner Littell noted that the information contained in the table, which is available on-line, was reviewed by the PUC and the Governor's Energy Office and is consistent with their data.
- (2) Coal: The Department anticipates an increase in the sale of coal burning heating units as an option to other fossil fuels. The Department is concerned about the lack of information on these units; their dirty emissions profile; and regulations associated with operations and emissions.

Board Chair Ernest Hilton asked what possible steps the Department would take to address the coal units.

Commissioner Littell explained that the Department would possibly consider a program that would assess a fee on dirtier units and a rebate on the purchase of a cleaner unit.

- (3) Geo-thermal energy: The Department's home heating table does not include geo-thermal as a heating source because of the lack of information concerning impacts and performance of these various types of heating units (e.g. some use antifreeze). Some data is available concerning placement of units in close proximity to each other and the potential efficiency impacts because of hydro-geological interference.

Regional Greenhouse Gas (RGGI): Agency heads of the 10 states are preparing for the auction.

Maine Yankee: Natural Resource Settlement was recently announced which resulted in five (5) payments of approximately \$940,000.00 (penalty monies will support some 5 natural resource damage restoration projects within the region of the former facility). Trustees for the settlement monies are the State of Maine's Natural Resource Commissioners. Commissioner Littell noted that none of the funds can be used for staff resources ~ by law all funds are used to support natural resource restoration.

Board Jurisdiction: The Department received a request for Board jurisdiction concerning a minor revision to the Portland Jetport's permit for blasting. The request expressed concerns about the jetport's prior environmental record and future environmental impacts from a past fuel overflow matter. The request did not identify any environmental concerns associated with the installation of the storm drain pipe; therefore, DEP's evaluation concluded that the request did not trigger the criteria for Board jurisdiction.

Maine Energy Recovery Company (MERC): Commissioner Littell confirmed that the Department received a general request by the City of Biddeford for Board jurisdiction of the license renewal application.

Board member M. Wing Goodale asked if the Department was considering BEP jurisdiction.

Commissioner Littell explained that there is no recommendation concerning jurisdiction at this time as staff noted a pending law suit between the facility and the City. The Department could provide the Board with a briefing on how the licensing of multi-permit facilities is coordinated at the agency.

The Board's Executive Analyst conveyed her understanding that the Air Bureau anticipates issuing a draft license for public review by December 2008. At that time there will be an opportunity for the public to request a public hearing.

Board member M. Wing Goodale indicated that no presentation by Department staff was needed at this time.

- B. COMMENTS FROM THE BEP CHAIR: NONE**
- C. EXECUTIVE ANALYST COMMENTS: None**
- D. BOARD CALENDAR: Reviewed**
- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:**
- F. EXECUTIVE SESSION: None**

II CONSENT AGENDA ITEMS

1. WAL-MART STORES EAST LP, Biddeford – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
2. TIMOTHY FORESTALL and NANCY FORESTALL, Harrison – Administrative Consent Agreement (BLWQ – Land)
3. ~~LEON G. CLIFF / H.E. CLIFF & SONS, Levant – Administrative Consent Agreement (BLWQ – Land) – Withdrawn from consideration~~
4. ~~CITY OF AUGUSTA, Augusta – Administrative Consent Agreement (BLWQ – Land) Withdrawn from consideration by Department staff.~~

Board voted (10-0-0-0) on a motion to approve consent agenda items 1 and 2 as presented:
Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion.

5. R.J. ENTERPRISES, INC., Richmond – Administrative Consent Agreement (BRWM)

Board voted (10-0-0-0) on a motion to remove the matter from the table and approve as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion.

III. Regular Agenda

1. CHAPTER 156, CO₂ BUDGET TRADING PROGRAM / AMENDMENT (adoption)
Staff: Andrea Lani, Bureau of Air Quality

The Board voted (10-0-0-0) on a motion to adopt Chapter 156, CO₂ Budget Trading Program amendments which (1) clarify the Department's authority to license CO₂ budget units and participate in auctions prior to start up of the program, (2) modify definition of "fossil fuel-fired unit" to include limits of no more than 5% fossil fuel use by a new source, (3) clarify different uses of the term "owner", and (4) include voluntary renewable energy set-aside provisions. The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B), 585-A and PL 2007 c. 317 and c. 608.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion.

2. CHAPTER 158, CO₂ BUDGET TRADING PROGRAM AUCTION PROVISIONS / NEW – (adoption)

Staff: Andrea Lani, Bureau of Air Quality

The Board voted (10-0-0-0) on a motion to adopt Chapter 158, CO₂ Budget Trading Program Auction Provisions as modified below which provides for the administration and implementation of the Department's CO₂ allowance auctions. This rule supports the carbon dioxide cap-and-trade program by establishing a system for the sale of emission allowances that is consistent with the programs developed by other states and jurisdictions participating in the regional greenhouse gas initiative [06-096 CMR Chapter 156]. The vote was taken pursuant to 38 M.R.S. Sections 341-D(1-B), 580, 580-A, 580-B, 580-C, and 585-A.

Section 3. C.(C)

The identification of any indictment or felony conviction of the bidder, corporate officers, directors, ~~principles~~ principals

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion.

3. CHAPTER 115 MAJOR AND MINOR SOURCE AIR EMISSION LICENSE REGULATIONS / AMENDMENTS -- (adoption)

Staff: Marc Cone, Bureau of Air Quality

and

4. CHAPTER 149 GENERAL PERMIT REGULATION FOR NON-METALLIC MINERAL PROCESSING PLANTS / NEW – (adoption)

Staff: Marc Cone, Bureau of Air Quality

The Board voted (10-0-0-0) on a motion to adopt Chapter 115, Major and Minor Source Air Emission License Regulations amendments which exempts rock crusher units licensed under Chapter 149 and to adopt Chapter 149, General Permit for Nonmetallic Mineral Processing Plants (new) for stationary and portable units provided they do not emit pollutants at levels that would require reporting under Chapter 137 Emission Statements. The Board voted pursuant to 38 M.R.S. Sections 341-D(1-B), 585-A and 590.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion.

5. TANGLEWOOD CAMP and LEARNING CENTER / PERMIT BY RULE #44467 / (Petition to Revoke submitted by Linda Tripp)

Staff: Colin A. Clark and Mike Mullen, Bureau of Land and Water Quality

The Board voted (9-0-1-0) on a motion to deny the petition submitted by Linda Tripp for a public hearing to revoke, modify or suspend the Department's approval of Permit By Rule #44467 for the construction of a five foot by five foot platform to attach a temporary ramp and float. The vote was taken pursuant to 38 M.R.S. 341-D(3), 38 M.R.S. Sections 480-A through 480-FF and 06-096 CMR Chapter 305.

Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale recused.

6. QUODDY BAY LNG and QUODDY BAY PIPELINE LLC / (Motion to Deny Applications without Prejudice)

Staff: Robin Clukey, Bureau of Land and Water Quality

Staff: Greg Wood, Bureau of Land and Water Quality

Staff: Eric Kennedy, Bureau of Air Quality

The Board voted (3-6-0-1) on a motion to grant the motion to deny without prejudice the Quoddy Bay applications to construct an LNG import terminal and associated pipeline project in Perry. The petition was submitted by Downeast LNG and supported by Robbinston Residents in support of Downeast LNG. The vote was taken pursuant to 38 M.R.S. 341-D(2) and 06-096 CMR Chapters 2 and 30. Motion failed.

Board members Don Guimond, Sue Lessard and Matt Scott voted to support the motion. Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Lissa Widoff and Nancy Ziegler voted to oppose the motion. Board members P. Andrews Nixon was absent.

The Board voted (6-3-0-1) on a motion to **deny** the motion to deny without prejudice the Quoddy Bay applications to construct an LNG import terminal and associated pipeline project in Perry. The petition was submitted by Downeast LNG and supported by Robbinston Residents in support of Downeast LNG. The vote was taken pursuant to 38 M.R.S. 341-D(2) and 06-096 CMR Chapters 2 and 30.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Lissa Widoff and Nancy Ziegler voted to support the motion. Board members Don Guimond, Sue Lessard and Matt Scott voted opposed. Board member P. Andrews Nixon was absent.

Next Regular Meeting –Thursday, August 7, 2008 – Holiday Inn / Ground Round